

# Senate Bill 2

Sponsored by Senator COURTNEY (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Renames offense of operating motor vehicle while using mobile communication device as offense of operating motor vehicle while using mobile electronic device. Defines "mobile electronic device."

Increases penalty for offense. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Further increases penalty for multiple violations within 10 years. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Prescribes additional minimum fines.

## A BILL FOR AN ACT

1  
2 Relating to the offense of operating a motor vehicle while using a mobile communication device;  
3 creating new provisions; and amending ORS 811.507.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 811.507 is amended to read:

6 811.507. (1) As used in this section:

7 (a) "Hands-free accessory" means an attachment or built-in feature for or an addition to a mo-  
8 bile [*communication*] **electronic** device, whether or not permanently installed in a motor vehicle,  
9 that when used allows a person to [*maintain*] **keep** both hands on the steering wheel.

10 [(b) "*Mobile communication device*" means a text messaging device or a wireless, two-way commu-  
11 nication device designed to receive and transmit voice or text communication.]

12 (b)(A) "**Mobile electronic device**" means an **electronic device that is not permanently in-**  
13 **stalled in a motor vehicle.**

14 (B) "**Mobile electronic device**" includes but is not limited to a device capable of text  
15 **messaging, voice communication, entertainment, navigation, accessing the Internet or**  
16 **producing electronic mail.**

17 (c) "**Using a mobile electronic device**" includes but is not limited to using a mobile elec-  
18 **tronic device for text messaging, voice communication, entertainment, navigation, accessing**  
19 **the Internet or producing electronic mail.**

20 (2) A person commits the offense of operating a motor vehicle while using a mobile [*communi-*  
21 *cation*] **electronic** device if the person, while operating a motor vehicle on a highway[,]:

22 (a) **Holds a mobile electronic device in the person's hand; or**

23 (b) Uses a mobile [*communication*] **electronic** device **for any purpose.**

24 (3) This section does not apply to a person who: [*activates or deactivates a mobile communication*  
25 *device or a function of the device or who*]

26 (a) Uses the **mobile electronic** device [*for voice communication*] **to communicate** if the person:

27 [(a)] (A) Is summoning medical or other emergency help if no other person in the vehicle is ca-  
28 pable of summoning help; **or**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1       **[(b) Is using a mobile communication device for the purpose of farming or agricultural**  
 2 **operations;]**

3       **[(c) (B) Is operating an ambulance or emergency vehicle while acting in the scope of the**  
 4 **person’s employment; or**

5       **[(d) (b) Is 18 years of age or older and is using a hands-free accessory[;].**

6       **[(e) Is operating a motor vehicle while providing public safety services or emergency services;]**

7       **[(f) Is operating a motor vehicle while acting in the scope of the person’s employment as a public**  
 8 **safety officer, as defined in ORS 348.270;]**

9       **[(g) Is operating a tow vehicle or roadside assistance vehicle while acting in the scope of the**  
 10 **person’s employment;]**

11       **[(h) Holds a valid amateur radio operator license issued or any other license issued by the Federal**  
 12 **Communications Commission and is operating an amateur radio;]**

13       **[(i) Is operating a two-way radio device that transmits radio communication transmitted by a sta-**  
 14 **tion operating on an authorized frequency within the citizens’ or family radio service bands in ac-**  
 15 **cordance with rules of the Federal Communications Commission;]**

16       **[(j) Is operating a vehicle owned or contracted by a utility for the purpose of installing, repairing,**  
 17 **maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity,**  
 18 **water or telecommunications, while acting in the scope of the person’s employment; or]**

19       **[(k) Is using a function of the mobile communication device that allows for only one-way voice**  
 20 **communication while the person is:]**

21       **[(A) Operating a motor vehicle in the scope of the person’s employment;]**

22       **[(B) Providing transit services; or]**

23       **[(C) Participating in public safety or emergency service activities.]**

24       **(4) Except as provided in subsection (5) of this section, the offense described in this section,**  
 25 **operating a motor vehicle while using a mobile [communication] electronic device, is a Class [C**  
 26 **traffic violation] A misdemeanor.**

27       **(5) Operating a motor vehicle while using a mobile electronic device is a Class C felony**  
 28 **if the person who committed the offense has, at least three times in the 10 years prior to**  
 29 **the date of the current offense, been convicted of, or has been found to be within the juris-**  
 30 **isdiction of the juvenile court for an act that if committed by an adult would be considered,**  
 31 **operating a motor vehicle while using a mobile electronic device in violation of this section**  
 32 **or the statutory counterpart to this section in another jurisdiction.**

33       **(6) In addition to any other sentence that may be imposed, the court shall impose one**  
 34 **or more of the following fines on a person convicted of operating a motor vehicle while using**  
 35 **a mobile electronic device:**

36       **(a) For a person’s first conviction, a minimum of \$1,000.**

37       **(b) For a person’s second conviction, a minimum of \$1,500.**

38       **(c) For a person’s third or subsequent conviction, a minimum of \$2,000 if the person is**  
 39 **not sentenced to a term of imprisonment.**

40       **(7) Notwithstanding ORS 161.635, the maximum fine that a court may impose on a person**  
 41 **convicted of operating a motor vehicle while using a mobile electronic device is \$10,000 if**  
 42 **there was a passenger in the motor vehicle who was under 18 years of age and was at least**  
 43 **three years younger than the person driving the motor vehicle at the time of the offense.**

44       **[(5)] (8) The Department of Transportation shall place signs on state highways to notify drivers**  
 45 **that violation of this section is subject to a maximum [fine of \$500] of one year’s imprisonment,**

1 a \$6,250 fine, or both, and that if a driver violates this section multiple times within a 10-year  
 2 period, the driver may be subject to additional penalties as described in this section.

3 **SECTION 2.** Sections 3 and 4 of this 2017 Act are added to and made a part of the Oregon  
 4 Vehicle Code.

5 **SECTION 3.** (1) The Oregon Criminal Justice Commission shall classify felony operating  
 6 a motor vehicle while using a mobile electronic device that is committed under the circum-  
 7 stances described in ORS 811.507 (5) as crime category 6 of the sentencing guidelines grid of  
 8 the commission.

9 (2) In determining criminal history for a person convicted of a felony that has operation  
 10 of a motor vehicle as an element, or of a felony that involved death, injury or property  
 11 damage caused by the use of a motor vehicle, the commission shall consider:

12 (a) Two prior convictions of misdemeanor operating a motor vehicle while using a mobile  
 13 electronic device to be equivalent to one conviction of felony operating a motor vehicle while  
 14 using a mobile electronic device;

15 (b) Any conviction of felony operating a motor vehicle while using a mobile electronic  
 16 device to be a person felony as defined in the rules of the commission; and

17 (c) Any conviction of misdemeanor operating a motor vehicle while using a mobile elec-  
 18 tronic device to be a person Class A misdemeanor as defined in the rules of the commission.

19 **SECTION 4.** When a person is convicted of operating a motor vehicle while using a mo-  
 20 bile electronic device in violation of ORS 811.507, in addition to any fine or other penalty  
 21 imposed upon the person under ORS 811.507 the court shall impose and may not suspend  
 22 execution of a sentence requiring the person either to serve at least 48 hours' imprisonment,  
 23 which shall be served consecutively unless justice requires otherwise, or to perform com-  
 24 munity service for times specified by the court under ORS 137.129. For purposes of this  
 25 section:

26 (1) A court may provide for the imprisonment to be served in jail or minimum security  
 27 facilities.

28 (2) Whenever the judge provides for the mandatory imprisonment to be served other than  
 29 consecutively, the judgment must specifically so provide and the judge must state the rea-  
 30 sons in writing.

31 **SECTION 5.** Sections 3 and 4 of this 2017 Act and the amendments to ORS 811.507 by  
 32 section 1 of this 2017 Act apply to conduct occurring on or after the effective date of this  
 33 2017 Act.